FRANK H. and CLAIRE E. STEFFLRE

IBLA 70-108 Decided September 23, 1971

Patents of Public Lands: Amendments

An application under Revised Statute sec. 2372 (43 U.S.C. § 697 (1964)) for amendment of a patent to land which asks for substitution of national forest land for land covered by the patent is properly rejected where the forest land has been reserved from entry.

Patents of Public Lands: Amendments

A request for a patent amendment based upon an alleged error in the issued patent will be denied where the patentee and others of the petitioners' predecessors had not raised such objection and the petitioners cannot show that the lands described in the patent were not those intended to be entered by the original entryman.

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IBLA 70-108	:	Los Angeles 040819
FRANK H. and CLAIRE E. STEFFLRE	:	Petition to amend patent denied
	:	Affirmed

DECISION

Frank H. and Claire E. Stefflre have appealed to the Secretary of the Interior from the decision of October 16, 1969, by the Office of Appeals and Hearings, Bureau of Land Management, wherein the decision of the land office dated May 6, 1969, rejecting their petition to amend homestead patent no. 1013117 was affirmed. This patent, issued to George Means on March 3, 1928, covered 40 acres described as the W 1/2 SW 1/4 SE 1/4 and the E 1/2 SE 1/4 SW 1/4 sec. 25., T. 12 S., R. 1 E., S.B.M., California.

Appellants, on November 21, 1968, filed with the land office at Riverside, California, a "Petition to Amend Patent" pursuant to Revised Statute § 2372 (43 U.S.C. § 697 (1964)) and the applicable regulation, 43 CFR 1821.6. They request that the Means' patent be amended to describe the S 1/2 SW 1/4 and the S 1/2 SE 1/4 sec. 25, T. 12 S., R. 1 E, S.B.M. The statute authorizes the Secretary of the Interior to change an entry, selection or location of public land made on land other than that intended to the land intended "if the same has not been disposed of and is subject to entry."

The land that the Stefflres seek to include in the amended patent was reserved from entry or settlement and set apart as a forest reserve as a result of Presidential Proclamation of

February 14, 1907, 1/ and is now part of the Cleveland National Forest. Since the land is in a national forest which is not subject to entry, it cannot be included in an amended patent under Revised Statute § 2372, even assuming all other requirements of the statute have been met. For this reason alone the petition must be rejected. Henry C. Cleek, A-29257 (March 12, 1963).

Furthermore the appellants have not shown that an error was made pertaining to the descriptions of the land entered or intended to be entered.

They say that prior to July 1888, one J. M. Williams, Jr., and his wife Sarah entered upon the 160 acres contained within the S 1/2 SW 1/4 and the S 1/2 SE 1/4 Sec. 25, T. 12 S., R. 1 E., S.B.M., constructed a dwelling and began to cultivate the soil. In that year, Williams filed a declaratory statement. On May 7, 1891, some two years after her husband's death, Sarah paid to the Federal Government the sum of $16.00. Appellant suggests that Mrs. Williams' payment was either ". . . to complete her husband's entry and thereby perfect her title or to notify the Government that she had stayed on . . . ."

Appellants also allege that sometime after the turn of the century, Mrs. Williams conveyed the property to one Herb Pile. Pile, they say, continued to use a portion of the land and improve the homestead until 1945 when he, in turn, conveyed his interest to the appellants.

While the above events were taking place, George M. Means came onto the land, filed for an entry and received a patent in 1928. In the same year, Means transferred title to one Arthur Dorsey who, by deed, transferred title to the appellants in 1942.

1/ The proclamation of February 14, 1907, (32 Stat. 3276) excepted from its operation "all lands which are at this date embraced in any legal entry . . ." It further provided that this exception "shall not continue to apply to any particular tract of land unless the entryman. . . . continues to comply with the law under which the entry. . . . was made. . . ."

Since Mrs. Williams' entry was subsisting on that date, and was canceled on February 25, 1907, the withdrawal did not attach to the land on the date of the proclamation, but did so attach on February 25, 1907, as shown infra.

Appellants assert that they have settled upon and improved the land, rebuilt the old Williams house, and have paid taxes on the property to the county of San Diego, California.

Appellants thus request that their patent which now includes 40 acres described as W 1/2 SW 1/4 SE 1/4 and E 1/2 SE 1/4 SW 1/4 sec. 25, T. 12 S., R. 1 E., S.B.M., be amended to include the entire 160 acre tract originally entered upon by the Williamses.

In rejecting this request the land office set forth these additional facts. On February 14, 1907, all of T. 12 S., R. 1 E., S.B.M., was withdrawn by Presidential Proclamation for the proposed San Diego Forest Reserve (now Cleveland National Forest). Forty of those acres (W 1/2 SW 1/4 SE 1/4 and E 1/2 SE 1/4 SW 1/4 sec. 25, T. 12 S., R. 1 E., S.B.M.) were restored to entry on March 30, 1920, by the Secretary of Interior. Five years later, on July 17, 1925, George M. Means filed for and was granted homestead entry Los Angeles 046819 for the above described 40 acres. On March 3, 1928, patent no. 1013117 was issued to him.

As for the Williamses, the land office said:

> The records of this office show that a homestead declaratory statement of J. M. Williams pertaining to S 1/2 SW 1/4, S 1/2 SE 1/4 sec. 25, containing 160 acres, T. 12 S., R. 1 E., SBM, was filed in July of 1888 but that a homestead entry was never made and completed by J. M. Williams. The records further show that a homestead embracing these same 160 acres was allowed to Sarah H. Williams on May 7, 1891, but that the entry was never completed and was cancelled by the Commissioner's letter "C" of February 25, 1907, thus terminating all rights under the homestead.

To begin with, we do not see the relevance of the Williamses experience to the petition to amend the Means' patent. As the decision appealed from stated:

> Even assuming, arguendo, that the Williams' entry was not properly cancelled, and assuming further that the decision cancelling the entry did not become final, there is still no basis for amending the Means patent to include the land entered by the Williams. Means' patent

> covered all of the land entered by him and all the land was open to entry at the time. There is nothing to suggest that the United States intended that he get more than the 40 acres entered, nor does anything suggest that Means himself expected more, as he received title to all that he applied for. No cogent argument has been advanced by the appellants to explain why Means should have been credited with earning title to the balance of the lands in the Williams' entry, although they request the patent be amended to show, in effect, that he did.
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> For this reason, too, the petition to amend was properly rejected.

There remains appellants' contention that they, as successors to the Williamses, have a right to a patent for all the land in the Williams' entry.

First, as we have noted, such a claim is not properly made in a petition to amend the Means' patent. Further, the appellants have not presented any evidence that Mrs. Williams conveyed her interest, if she had an assignable interest, in the land to anyone.

Finally, the records show that Mrs. Williams made a homestead entry on May 7, 1891, for the 160 acres covered by her husband's prior declaratory statement. Her entry was canceled by Commissioner's letter "C" on February 25, 1907. Appellants' attempts to convert her entry into a final proof are without any basis on the record. Accordingly we conclude that her entry was canceled, as the record shows, that upon cancellation the land in the entry became subject to the withdrawal of February 14, 1907, John E. Henry, 30 L.D. 158 (1900), and that except for the 40 acres restored to entry in 1920 subsequently patented to Means, that land is still within a forest reserve and not open to entry.

The appellants have requested a hearing. They have not made any offer of proof which, if established, would afford a basis for the relief they seek. They have had ample opportunity to come forward with facts supportive of their assertions. The record being devoid of such facts, appellants' request for a hearing or in the alternative, time to submit additional briefs, is hereby denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Martin Ritvo, Member

We concur:

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Joan B. Thompson, Member

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Frederick Fishman, Member